

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATEM NAJI FARIZ
_____ /

**MOTION OF HATEM NAJI FARIZ TO TRANSFER VENUE, REQUEST FOR
EVIDENTIARY HEARING AND MEMORANDUM OF LAW IN SUPPORT**

Defendant, Hatem Naji Fariz, by and through undersigned counsel, and pursuant to the Fifth Amendment's Due Process Clause, the Sixth Amendment, and Federal Rule of Criminal Procedure 21(a), hereby respectfully requests that this Honorable Court transfer venue in this case from the Tampa Division of the Middle District of Florida to a venue outside the state of Florida. Mr. Fariz would request an evidentiary hearing. As grounds in support, Mr. Fariz sets forth the following memorandum of law supported by an expert declaration and exhibits.

I. Introduction

On February 19, 2003, Mr. Fariz and seven other co-defendants, including Dr. Sami Amin Al-Arian, were charged in a 50-count Indictment. (Doc. 1). On September 21, 2004, the grand jury returned a 53-count Superseding Indictment against Mr. Fariz, Dr. Al-Arian and seven co-defendants. (Doc. 636). The allegations in the Superseding Indictment are all based on the Defendants' alleged support of the Palestinian Islamic Jihad (PIJ). Mr. Fariz is set to begin trial alongside three of his co-defendants, including Dr. Al-Arian, on May 16, 2005, in Tampa, Florida.

Mr. Fariz cannot receive a fair trial as an accused conspirator with Dr. Sami Al-Arian in the Tampa Division of the Middle District of Florida because: (1) The Tampa Division has been saturated by an extraordinary amount of pretrial publicity regarding Dr. Al-Arian both through ten years of traditional media coverage, and through media coverage of and paid advertising related to the 2004 United States Senate campaigns. (2) Much of the media coverage of Dr. Al-Arian and the case has been of a prejudicial nature, going beyond mere statements of the alleged facts and judicial proceedings. The coverage includes public statements of current and former law enforcement officials (including the Attorney General himself and an investigative agent on the case who authored a search warrant affidavit) and implications that the case is somehow related to such highly emotional and prejudicial subjects as Al-Qaeda, the September 11 attacks, and the war in Iraq. (3) Dr. Al-Arian became the subject of expensive and sophisticated marketing campaigns which specifically sought to provoke the public's emotions and natural fears regarding terrorism. A pivotal issue in the 2004 campaign for United States Senator from Florida was not whether Dr. Al-Arian is a terrorist, but whether Betty Castor dealt with the terrorist Al-Arian appropriately while she was the President of University of South Florida in Tampa.

For these reasons, as demonstrated more fully below, Mr. Fariz is compelled to request a change of venue. In order to ensure his rights to a fair trial, counsel requests that this case be tried outside of the state of Florida.

II. Standard for Change of Venue

The Due Process Clause of the Fifth Amendment guarantees Mr. Fariz the right to be tried by a panel of impartial and indifferent jurors who can render a verdict based on the evidence presented in court. *Irvin v. Dowd*, 366 U.S. 717, 721 - 722 (1961) (citing the Fourteenth Amendment). To protect the due process rights of the defendant, a trial court must transfer a case to another venue when it is unable to seat an impartial jury due to prejudicial pretrial publicity.¹ *Coleman v. Kemp*, 778 F.2d 1487, 1489 (11th Cir. 1985) (citing *Rideau v. Louisiana*, 373 U.S. 723, 726 (1963)). This protection of a defendant's due process rights is outlined in Federal Rule of Criminal Procedure 21(a) which states:

Upon the defendant's motion, the court must transfer the proceeding against that defendant to another district if the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there.

There are two standards for determining whether a change of venue is merited. First, a defendant may demonstrate *actual* prejudice by showing that one or more of the jurors who decided the case had an opinion, before hearing any evidence at trial, that the defendant was

¹The court may also grant a motion for continuance to alleviate the effects of pretrial publicity on the jury pool. *Sheppard v. Maxwell*, 384 U.S. 333, 362-63 (1966). This Court has already granted one continuance citing the November election. (Doc. 736) Mr. Fariz contends that the first continuance did not achieve the goal of purging the jury pool of the animus injected during the senatorial campaign, and that a further continuance is unlikely to have any worthwhile effect on the problem. Counsel for Mr. Fariz is also contemplating severance issues, and a motion to that end may be forthcoming.

guilty and that the juror could not set aside that preformed opinion.² *Cummings v. Dugger*, 862 F.2d 1504, 1509 (11th Cir. 1989) (citing *Coleman v. Zant*, 708 F.2d 541, 544-45 (11th Cir. 1983)). Second, a defendant may demonstrate *presumed* or *inherent* prejudice by showing that pretrial publicity is sufficiently prejudicial and inflammatory and saturates the community to the point where seating an impartial jury is not possible. *Id.*

To make a showing of presumed prejudice, a defendant must show 1) evidence of inflammatory, prejudicial pretrial publicity; and 2) that the prejudicial publicity “so pervades or saturates the community as to render virtually impossible a fair trial by an impartial jury drawn from that community.” *Coleman v. Kemp*, 778 F.2d at 1490 (citing *Mayola v. Alabama*, 623 F.2d 992, 997 (5th Cir. 1980)).³ The Eleventh Circuit has “repeatedly noted that the principle of presumed prejudice ‘is rarely applicable and reserved for extreme situations.’” *Mills v. Singletary*, 63 F.3d 999, 1010 (11th Cir. 1995) (citations omitted). In assessing prejudicial pretrial publicity, the court must consider the totality of the circumstances, including such factors as the type of pretrial publicity and the time lapse between the height of publicity and the trial. *United States v. Lehder-Rivas*, 955 F.2d 1510, 1524 (11th Cir. 1992). A court may find that while the pretrial publicity has saturated the

²Since no jurors have been selected in this case, it is premature to attempt a showing of actual prejudice. Therefore, this motion will concentrate on a showing of presumed prejudice. In the event that this motion is denied, Mr. Fariz reserves the right to reassert his motion for change of venue if he is facing denial of his due process rights as a result of actual prejudice.

³In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions handed down by the former Fifth Circuit before October 1, 1981.

community, the publicity was not of an inflammatory nature and that it was ““essentially factual and was not directed at arousing or inciting the passion of the community.”” *Mills*, 63 F.3d 999 at 1012 (citations omitted). In determining whether publicity is prejudicial in nature, the court should consider (1) whether the publicity shows the defendant making a confession or admission; (2) whether an official influenced the publicity in the case; and (3) whether the press made any “invidious personal attacks” on the defendant. *Knight v. Dugger*, 863 F.2d 705, 721 - 23 (11th Cir. 1988).

III. Argument

Mr. Fariz is well aware of his extremely heavy burden of demonstrating presumed prejudice. He understands that a change of venue in federal cases is only rarely granted, and only in the most exceptional cases. Nevertheless, Mr. Fariz contends that the pretrial publicity surrounding his co-defendant, Sami Al-Arian, is truly exceptional. In a case involving the violent murder of six members of one family in a small town in Georgia, the Eleventh Circuit reversed the trial judge’s decision denying a change of venue stating, “If there were no constitutional right to a change in venue in the instant case, then one can conceive of virtually no case in which a change of venue would be a constitutional necessity.” *Coleman v. Kemp*, 778 F.2d at 1538. The prejudicial pretrial publicity in *Coleman v. Kemp* consisted of dozens of inflammatory newspaper articles circulated to the majority of residents of the very small community. *Id.* at 1540. Similarly, residents of the Tampa Division have been exposed to over a decade of inflammatory media coverage of Dr. Al-Arian. This prejudicial media coverage was highlighted and reinforced by high-powered

political campaigns which presumed Dr. Al-Arian's guilt, and which sought to manipulate the feelings, beliefs, and opinions of the same people who are to sit on his jury. These sophisticated advertising campaigns were specifically intended to affect the thoughts of as many Florida voters, and thereby potential jurors, as possible. Consequently, Mr. Fariz will be denied his constitutional right to a trial by an impartial jury if he is to be tried in Tampa alongside Dr. Al-Arian.

A. Background on Evidentiary Support for Change of Venue

The Office of the Federal Public Defender retained Edward J. Bronson, Ph.D., as an expert to analyze data and provide a report on the pretrial prejudice against the defendants in this case.⁴ Professor Bronson has studied pretrial publicity for over 35 years. Professor Bronson has testified or consulted on change of venue issues in many high profile cases including *United States v. McVeigh* (Oklahoma City bombing), *Oklahoma v. Nichols* (Oklahoma City bombing), *United States v. Kaczynski* (the "Unabomber" case), *United States v. John Walker Lindh* (the "American Taliban" case), and *United States v. Skilling, et al.* (Enron). Affidavit, ¶ 10 at 2. Significantly, Professor Bronson has recommended against a change of venue in 139 cases, and in favor of a change of venue in 102 cases. Professor Bronson has testified at the behest of and in favor of both criminal defendants and state and federal prosecutors. Affidavit, ¶ 9 at 1 - 2.

The Federal Public Defender also retained the Florida Survey Research Center

⁴Professor Bronson's report is attached as Exhibit 1 in the form of an Affidavit. His curriculum vitae is attached as Exhibit 2.

("FSRC") at the University of Florida, Gainesville, Florida, to conduct a survey of registered voters in each of four federal court divisions in Tampa, Tallahassee, Miami, and Atlanta.⁵ The survey was designed to determine the level of prejudice against Dr. Al-Arian and his co-defendants. The survey project was developed and implemented by Michael J. Scicchitano, Ph.D., Director of FSRC and Associate Professor of Political Science, and Tracy L. Johns, Ph.D., Research Director of FSRC and adjunct instructor in sociology and political science. The FRSC obtained 400 completed responses for each of the four jurisdictions, producing a result within approximately plus or minus 5% accuracy. Professor Bronson, a member of the American Association of Public Opinion Research, states that the "survey conducted in this case meets the highest standards of survey research." Affidavit, ¶ 55 at 12.⁶

B. The community of Tampa has been saturated by the pretrial publicity regarding Mr. Fariz' case and his co-defendant, Dr. Sami Al-Arian.

Almost everyone in Tampa has heard of Sami Al-Arian. Ninety-five percent of Tampa Division respondents to the UF survey knew of Sami Al-Arian and/or his case.⁷ Only 18 of 400 people polled in the Tampa Division responded that they had never heard of Dr.

⁵Complete results of all four surveys are attached as Exhibits 3 - 6.

⁶Professor Bronson provides a more thorough analysis of the survey methodology in his affidavit at paragraphs 53 - 70.

⁷ In *United States v. De La Vega*, 913 F.2d 861, 864 (11th Cir. 1990), the court upheld the trial court's denial of a change of venue motion despite intense media coverage because the majority of potential jurors only recalled "sketchy details" about the case and most had not formed opinions about guilt or innocence. In contrast, many respondents to the Tampa survey demonstrated detailed knowledge of the case. Affidavit, ¶ 84 ©) at 21.

Al-Arian. Affidavit, ¶ 72 at 15. In fact, based on name recognition alone without further prompting information, over 80% of respondents answered affirmatively when asked if they had ever “seen, heard, or read anything about Dr. Sami Al-Arian.” *Id.* As Professor Bronson opines, name recognition response demonstrates a high level of salience, indicating a heightened level of knowledge and stronger feelings about the name or case. Affidavit ¶ 111 - 112 at 26 - 27.

The recognition rates in Tallahassee and Miami were also significant. Almost three quarters of people in the Tallahassee Division were familiar with Al-Arian, and well over 60% in Miami had heard of him. Comparatively, the recognition rate in Atlanta was only about 33%. Affidavit, ¶ 108 at 26.

The public’s familiarity with this case is not surprising given the substantial media coverage devoted to the case over the past decade. On the date of the original indictment, February 21, 2003, the Tampa Tribune wrote that “Reporter Michael Fechter of The Tampa Tribune has reported on Sami Al-Arian’s alleged ties to the Palestinian Islamic Jihad for almost eight years.” Minarcin, Pat, *About This Story*, Tampa Tribune, Feb. 21, 2003, available at <http://news.tbo.com/news/MGAF8ZEQFCD.html> (accessed May 5, 2005). The Tribune’s first stories on Dr. Al-Arian were in May of 1995 in a report called “Ties to Terrorists.” *Id.*

A search revealed that 973 articles regarding Al-Arian had been published in the Tampa Tribune and the St. Petersburg Times between January of 2001, and April 20, 2005. Affidavit, ¶ 25 at 4. Compared with other cases Professor Bronson has been involved in, this

case ranks only behind the Oklahoma City bombing case and the Enron case in number of newspaper articles. Affidavit, ¶ 27 at 5.

Significantly, the frequency of newspaper articles has sustained over the years. See Affidavit, ¶ 30, Table 1 at 6. There has not been a time lapse between the height of pretrial publicity and the trial to allow for any prejudice to dissipate. Professor Bronson states that, “The passage of time . . . [allows] memories, passions, and prejudice to fade. Obviously that has not happened in this case. The coverage has been fairly constant over time, not allowing a reduction in prejudice, and in fact reinforcing it.”⁸ Affidavit, ¶ 31 at 6.

In *United States v. Lehder-Rivas*, 955 F.2d 1510, 1524 (11th Cir. 1992), a defendant charged with importing cocaine was called a “drug kingpin” and a “narco-terrorist” in the media. The court found that the publicity was unfavorable, but not extreme, citing the significant drop in coverage prior to trial. *Id.* at 1524 - 25; *see also Spivey v. Head*, 207 F.3d 1263, 1270 - 71 (11th Cir. 2000) (affirming denial of change of venue motion because, in part, much of the publicity was published years before the trial). As demonstrated by Professor Bronson’s research, however, there has been no noticeable drop in media attention in this case. In fact, the high level of media attention has sustained over a number of years, and is expected to increase as the trial nears. The extent of the media coverage of Al-Arian

⁸As mentioned in the Affidavit, Professor Bronson was not able to complete a comprehensive analysis of the media on the Al-Arian case due to lack of time and resources. Affidavit, ¶ 24 at 4. This limited analysis covers only newspaper articles and the internet, but does not cover any television, radio or other media that have added to the extensive publicity in this case.

and the high level of recognition shown in the results of the survey demonstrate that the Tampa Division, and possibly the state of Florida, has been saturated with information regarding Dr. Al-Arian and this case.

More exceptional than the media coverage, however, was the 2004 United States Senate Campaign in Florida. The Florida senatorial race was one of the most contentious and high-stakes campaigns in the country during one of the most contentious and high-stakes presidential campaigns in decades. This campaign was so important and closely watched that NBC News sent Tim Russert, the host of its Sunday news show “Meet the Press,” to moderate the Florida debates. In introducing the debates, broadcast on NBC affiliates and public radio across Florida, Russert stated, “One person who has played a dominant role in this campaign is not here tonight. His name is Sami Al-Arian.” Exhibit 7. Sami Al-Arian was the topic of discussion for the first twenty minutes of the sixty minute debate. *Id.* From the Democratic primaries through the general election in November, Florida voters were inundated with a barrage of campaign advertising focusing on Dr. Al-Arian.

C. The pretrial publicity regarding Sami Al-Arian and this case has been insidious, inflammatory, and prejudicial to all defendants.

1. Media

The news media covering Sami Al-Arian and this case has been inflammatory and prejudicial; in addition to repeatedly linking Dr. Al-Arian with terrorism over the course of a decade, the news media has sensationalized the case by implying connections to the Oklahoma City bombing, the September 11 attacks, the war in Iraq, Al-Qaeda, etc. Merely

stating the facts of a case, even if negative, is not enough to constitute prejudicial pretrial publicity for purposes of a change of venue motion. In *Devier v. Zant*, 3 F.3d 1445, 1462 (11th Cir. 1993), the court upheld the trial court's denial of a change of venue motion because newspaper articles were "essentially factual;" were more focused on procedural aspects of the case than specific facts; and, were not aimed at arousing passion in the community. See also *Cummings v. Dugger*, 862 F.2d 1504, 1511 (11th Cir. 1989) (finding that "none of the publicity was calculated to provoke hostility:"); *Bundy v. Dugger*, 850 F.2d 1402, 1425 (11th Cir. 1988) (noting that the media outlets specifically did *not* broadcast editorials). The news coverage of Dr. Al-Arian and this case has gone far beyond the reporting of mere facts and procedural issues, and has continued to provoke hostility and arouse the passions of the community.

The prejudicial and inflammatory nature of the news coverage is exemplified in a web page hosted by TBO.com, a Tampa Bay website sponsored by the Tampa Tribune and Tampa NBC News affiliate News Channel 8. Exhibit 8. The site displays a large headline, "Terrorism in Tampa? Al-Arian and Others Arrested in Sweep." The web page apparently makes readily available every article published by the Tampa Tribune regarding Al-Arian in the past ten years. The "Ties to Terrorism" series printed in 1995 are specifically highlighted. The web page includes multimedia links to television news reports of the case, the statement of former Attorney General John Ashcroft regarding the indictment and arrests, and an affidavit of a U.S. Customs agent regarding a search warrant in a case in Virginia. The website even includes links to alleged evidence in the case. Anyone may reach the

“Terrorism in Tampa” web page by typing in the keyword “Al-Arian” on the home page. Viewers of News Channel 8 are routinely encouraged to use keywords on the website during the news broadcasts.

Apart from the title labeling the innocent-until-proven-guilty defendants as terrorists (the question mark in the headline hardly covers up the clear bias), there are several prejudicial, and some blatantly misleading, items on the site. For example, there is an openly biased survey which asks, “How do feel [sic] about the terrorist arrests in Tampa?” The four possible answers are “Better now,” “More anxious than before,” “Charges are unfounded,” and “Not interested.” While the poll does at least give an option of “charges are unfounded,” the implication is certainly that the Tampa Bay area was in some danger of a terrorist attack before the arrests.

Another example of sensationalism on the web page is a section labeled “Graphics and galleries” which includes a link to the “Jihad locations map.” The map pinpoints the Gaza Strip, described as the location of a 1995 suicide bombing in which an American college student was killed; Damascus, described as the headquarters of the PIJ and location of Ramadan Shallah; and Cairo, described as the birthplace of the PIJ. The information is not attributed to any source.

Also under the title “Graphics and galleries” is a link called “The Wire: Edging Towards Conflict.” This feature is highly disturbing because when viewers click on the link from the “Terrorism in Tampa” web page, they go to a multimedia graphic showing scenes of the war in Iraq - a topic that will provoke an emotional response in almost anyone, but

which has absolutely nothing to do with this case. Any viewer who sees this graphic is misled to believe that Al-Arian and his co-defendants have something to do with the war in Iraq.

2. The 2004 Senate Campaigns

The Supreme Court determined that presumed prejudice was established when a defendant's confession was broadcast on television just three times and seen by as many as 97,000 people in a town of 150,000. *Rideau v. Louisiana*, 373 U.S. 723, 724 (1963). The Court referred to the trial held in *Rideau* as a "kangaroo court" stating that:

For anyone who has ever watched television the conclusion cannot be avoided that this spectacle, to the tens of thousands of people who saw and heard it, in a very real sense was Rideau's trial . . . Any subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality.

Id. at 726. The spectacle that was the 2004 Florida Senatorial campaigns created a situation even more meritorious of a change of venue than that in *Rideau*. One cannot conceive of more prejudicial pretrial publicity than multimillion dollar advertising campaigns that presume the guilt of the defendant and provoke public fear of him. Starting during the democratic primaries in the summer of 2004, candidates engaged in a ruthless war over Betty Castor's performance as President of the University of South Florida during the mid-1990s when Al-Arian was a computer science professor at the college. Throughout the campaign, Dr. Al-Arian's guilt was a foregone conclusion - the only issue was which candidate was better equipped to protect Floridians against Dr. Al-Arian and terrorists like him.

For example, a direct mailing to voters showed pictures of masked men in military uniforms burning an American flag with a quote stating, “What is certain is this: Alleged terrorists found safe harbor at the university on Mrs. Castor’s watch.” Exhibit 12. Another direct mailing showed men carrying guns and wearing black face masks and headbands with Arabic words. Exhibit 13.⁹ The large quotation under the picture states “Evil was in her midst and she did nothing,” quoting Florida Congressman Peter Deutsch. The mailing further states “Betty Castor: Easy on Terrorists, Putting Florida’s Families at Risk.” These mailings, while replete with the token words “alleged” and “suspected,” clearly maintain the objective of making Florida’s voters believe that Sami Al-Arian is a terrorist who aims to harm them and their families.

The television advertisements broadcast incessantly in the weeks leading up to the general election in November were equally inflammatory. Current United States Senator Mel Martinez¹⁰ ran at least three television ads featuring Sami Al-Arian and depicting him as a terrorist.¹¹

⁹Counsel was unable to properly scan Exhibit 13, so a photocopy is submitted for the Court’s review. The original document is currently in the possession of Professor Bronson and can be provided to the Court upon counsel’s receipt of it.

¹⁰Mel Martinez went on to win the general election in November, and is currently representing the state of Florida in the United States Senate. Prior to serving in the Senate, Mr. Martinez served on President Bush’s cabinet as Secretary for Housing and Urban Development.

¹¹Betty Castor ran prejudicial television advertisements as well, but the Martinez ads are highlighted here because they specifically aim to provoke the public fears of Dr. Al-Arian. The Castor ads, while effectively presuming Al-Arian’s guilt, seek to defend her own actions and are thereby somewhat less, relatively, inflammatory. A videotape recording of the three Martinez

1. “Bill”

The Mel Martinez television advertisement entitled “Bill,” uses the prestige of the United States Department of Justice to emphasize the severity of the “terrorism” at the University of South Florida. The clip begins with Betty Castor stating, “As university president I took action to remove a suspected terrorist from our campus.” The ad switches to Bill West, with a caption reading, “Bill West, Fmr. Special Agent Federal INS.” Mr. West states in reference to Mrs. Castor’s statement,

Unfortunately, that’s wrong. I know. I’m Bill West. When I was a Special Agent with the Federal INS, I launched a criminal investigation into the terrorist activity at the University of South Florida. As university president, Betty Castor’s lack of strong leadership allowed a dangerous situation to get worse. Stopping terrorists takes aggressive action and Betty Castor did not deliver.

As Mr. West is speaking, “Islamic Jihad at USF under Betty Castor” flashes across the screen in red. Sami Al-Arian, Ramadan Abdullah Shallah, and Sameeh Hammoudeh’s faces and names fly out at the viewer before settling themselves on the screen. “Suspected Terrorist” is then stamped across them.

In *Mills*, the Eleventh Circuit upheld a denial of a change of venue motion in part because public officials did not make “public, blatantly prejudicial comments.” *Mills*, 63 F.3d at 1012; *see also Knight*, 863 F.2d at 721 - 23 (citing whether an official influenced the publicity in the case as a factor in assessing prejudicial publicity). Agent West is the agent

ads is attached as Exhibit 9. The Castor ads are in electronic format on CDs attached as Exhibits 10 and 11. The Castor ads require the software program “Quicktime” to run; Quicktime is available for free download on the internet.

who investigated Sami Al-Arian and WISE in the mid-nineties. He signed the affidavit accompanying the application for search warrants to search Al-Arian's home, office, and the WISE offices in 1995.¹² The advertisement entitled "Bill" has a former investigative agent in the case currently before this Court proclaiming to potential jurors that Dr. Al-Arian's presence at the University of South Florida was "dangerous." This same agent could very well appear as a witness at trial.

2. "Record"

Mel Martinez's advertisement "Record" focuses on the "terror cell" at the University of South Florida, and the "cell's" hatred of the United States. The ad begins with a video clip of Sami Al-Arian speaking at a conference.¹³ Dr. Al-Arian is speaking in Arabic, and the words "Damn America...damn Israel...until death" are depicted across the middle of the screen. A background voice states,

What is Islamic Jihad? A murderous band of terrorists who hate America. Incredibly, under Betty Castor's weak leadership, Islamic Jihad use her university as cover. It wasn't one terrorist; it was a cell. Betty Castor was warned, but refused to fire a single one, and defended them under academic freedom. Freedom to plot terrorism? That's the same Betty Castor who called America the bully of the world.

As the voice is speaking, four more scenes are depicted. The first shows the words "Under Betty Castor..." across the top. Beneath the words are darkened pictures of Sameeh

¹²Incidentally, Agent West cited Tampa Tribune articles as sources of information in his search warrant affidavit.

¹³The video clip appears to be from the videotapes of conferences that are part of the evidence in this case.

Hammoudeh, Sami Al-Arian, Ramadan Abdullah Shallah, and Mazen Al-Najjar. Beneath their pictures are the words “FEDERAL INDICTMENT,” and a quote from the *Miami Herald*, “Members could receive cover as teachers or students.”

The next scene also shows the words “Under Betty Castor...” across the top with lit-up pictures of Mr. Hammoudeh, Mr. Al-Arian, Mr. Shallah, and Mr. Al-Najjar beneath them. Under the pictures, the words “TERROR CELL” fly out at the screen several times, along with a quote from the *University of South Florida Oracle*, “Castor...has no plans to investigate...terrorist connections.” Following that scene is a picture of Betty Castor and a picture of Dr. Al-Arian giving the same speech, with Dr. Al-Arian’s voice in the background, and the words “Betty Castor: How can we trust her judgment...again?” written across the pictures.

The final scene shows Mr. Martinez smiling and waving in front of United States flag, a stark contrast to the scenes before it. This particular advertisement does not even feign respect for Dr. Al-Arian’s right to a presumption of innocence as it blatantly refers to him and his associates as terrorists and a terror cell.

3. “Fierce Defender”

Mel Martinez’s advertisement “Fierce Defender” makes the most insidious claim of the three advertisements depicting Sami Al-Arian. The advertisement connects Dr. Al-Arian with the events of 9/11, despite no actual allegations or evidence of such a connection.

The ad has four scenes. The first shows a picture of Mrs. Castor and a quote from the *Tallahassee Democrat*, where she states that America is “the bully of the world.” The

second scene shows Dr. Al-Arian making a speech. The words “USF Professor Sami-Al-Arian” are written across the top of the screen. At the bottom of the screen, “Damn America...damn Israel...until death” flashes across the screen two separate times, in different sized font. The voice-over states,

Betty Castor calls America the bully of the world. That’s the same Betty Castor who allowed an Islamic Jihad cell on her campus. After 9/11, how can we trust Castor’s judgment?

The voice-over then continues about Mel Martinez and his “great American story.” The next scene shows Mrs. Castor and Dr. Al-Arian’s pictures next to each other, with the words “After 9/11, how can we trust Castor’s judgment [sic]” across their faces. This advertisement implies that Florida voters should be afraid of Al-Arian as they are afraid of another 9/11.

D. Public Prejudice against Al-Arian and his co-defendants

After reviewing the recognition rates demonstrating the saturation of publicity within Florida communities, and the insidious nature of the publicity, it is no surprise that the majority of people in the Tampa Division, and significant numbers of those in Tallahassee and Miami, believe that Dr. Al-Arian is guilty. The survey measured prejudgement of guilt by describing briefly the charges against Dr. Al-Arian and his co-defendants and then asking if respondents believe Dr. Al-Arian is definitely guilty, probably guilty, probably not guilty, or definitely not guilty. Affidavit, ¶ 74 at 15. In the Tampa Division, 55% of people believe, without ever seeing any evidence in court, that Sami Al-Arian is definitely or probably guilty. Affidavit, ¶ 75 at 15 - 16. The comments in response to the open-ended questions

demonstrate the strength of people’s negative feelings toward Dr. Al-Arian. Over a quarter of the respondents in Tampa volunteered the word “terrorist” (or some variation) in response to the name Sami Al-Arian. The list includes dozens of other emotionally charged comments.¹⁴ Affidavit, ¶ 84 at 18 - 20.

In Tallahassee, about 34% of people think Dr. Al-Arian is definitely or probably guilty, and in Miami, about 28% of people think Dr. Al-Arian is definitely or probably guilty. By comparison, in Atlanta, less than 15% of people think Dr. Al-Arian is definitely or probably guilty. Affidavit, ¶ 106 at 25.

E. Other Considerations

The nature of the charges against the defendants as well as the close community connection between Dr. Al-Arian and the city of Tampa make this case particularly salient in the Tampa Division. As Professor Bronson states, “[c]ases are salient when they seem especially relevant to our lives.” Affidavit, ¶ 45 at 10. Unlike other cases in which the community where the trial takes place has little connection with the actual case, the community of Tampa, and even the state of Florida, has a particular connection with Al-Arian and this case. Affidavit, ¶¶ 41 - 44 at 9 - 10. See also Affidavit, ¶ 89 at 22 and ¶ 105 at 25. In contrast, Professor Bronson recommended against a change of venue in the “Unabomber” case because there was no particular focus on Sacramento, and therefore, there

¹⁴The juror questionnaires reflected similarly harsh prejudice against Dr. Al-Arian. Because the Court has already reviewed the questionnaires in detail, and because counsel for Dr. Al-Arian have retained an expert to analyze the questionnaires, the questionnaires are not given further attention in this memorandum.

was no disparate emotional impact on the community. Affidavit, ¶ 104 at 25. Instead, Professor Bronson stated that this case is more akin to the Oklahoma City bombing case in terms of community salience. Affidavit, ¶¶ 45 - 46 at 10.

This case is a particularly good candidate for change of venue because alternate venues would almost certainly provide Mr. Fariz with a better opportunity to receive a fair trial. As demonstrated by the survey data, far fewer people outside the state of Florida are familiar with Al-Arian or this case, and far fewer people have a preconceived opinion of guilt. The instant case is not as widely known nationally, therefore a change of venue would be highly likely to improve Mr. Fariz' chances of being tried before a fair and impartial jury.

IV. Conclusion

For the foregoing reasons, Mr. Fariz respectfully requests that this Honorable Court transfer this case from the Tampa Division of the Middle District of Florida to a venue outside the state of Florida. Mr. Fariz requests an evidentiary hearing on this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Kringsman, Trial Attorney, U.S. Department of Justice; Alexis L. Collins, Assistant United States Attorney; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ Kevin T. Beck
Kevin T. Beck
Assistant Federal Public Defender